

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

DANA D. MOHAMMADI,

Plaintiff,

VS.

AUGUSTINE NWABUISI,
ROSE NWABUISI,
RESOURCE HEALTH SERVICES, INC.
d/b/a RESOURCE HOME HEALTH
SERVICES, INC., and RESOURCE
CARE CORPORATION

Defendants.

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§ CIVIL ACTION NO. SA-12-CA-0042 RP

**AFFIDAVIT OF PHILIP J. MOSS IN SUPPORT OF  
MOTION TO APPOINT RECEIVER**

Before me, the undersigned notary, on this day personally appeared Philip J. Moss, the affiant, a person whose identity is known to me. After I administered an oath to affiant, affiant testified:

1. "My name is Philip Moss. I am of sound mind, over the age of eighteen (18), and am fully competent and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. I am an attorney licensed to practice in the State of Texas and have been licensed since November 2010. My address and contact information are: Equal Justice Center, 8301 Broadway St., Suite 309, San Antonio, Texas 78209; Phone: (210) 308-6222 ext. 102; Fax: (210) 308-6223; E-mail: [pmoss@equaljusticecenter.org](mailto:pmoss@equaljusticecenter.org).

3. The Equal Justice Center represents the Plaintiff/Judgment Creditor Dana D. Mohammadi in the United States District Court for the Western District of Texas in a

suit under the Fair Labor Standards Act , 29 U.S.C. §201 *et seq.*, to recover unpaid wages in cause number SA:12-CV-42 DAE.

4. Plaintiff has collected the underlying judgment in the amount of \$38,100.49 in unpaid wages and \$38,100.49 in liquidated damages. Thomas Kolker was appointed as turnover receiver by the Bexar County District Court, 57th Judicial District, in regard to the underlying Judgment for unpaid wages and liquidated damages. The receivership was closed on November 7, 2014. However, Defendants have not yet paid Plaintiff for the award of attorney's fees in the amount of \$172,411.75. Moreover, to date, no bond has been posted pertaining to the attorney's fees award.

5. During the discovery period, Claire Rodriguez, an attorney who formerly represented the Plaintiff, deposed Defendant Rose Nwabuisi who is the owner of Resource Health Services, Inc. d/b/a Resource Home Health Services, Inc. and Resource Care Corporation. Resource Health Services, Inc. d/b/a Resource Home Health Services and Resource Care Corporation are Texas-based corporations that provide a range of in-home healthcare services, including the provision of nurses. At deposition, Mrs. Nwabuisi testified that her companies have contracts for their services with the Texas Department of Aging and Disability Services. (Exhibit A-1)

6. During the first trial, Mrs. Nwabuisi testified that her companies also have ongoing contracts for their services with Superior, Amerigroup, and Molina Healthcare. (Exhibit A-2).

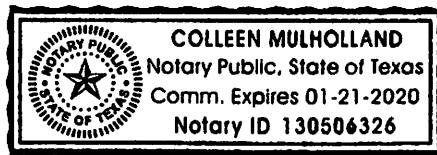
7. These contracts are assets that are non-exempt and cannot be attached or levied on by ordinary legal process.

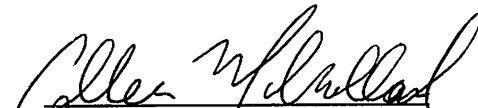
8. The attached Proposed Order Appointing Receiver is in substantially similar form to receivership orders entered in Bexar and Travis Counties, and is in a form substantially similar to the receivership order, as amended, entered by the Bexar County District Court pertaining to the Court's award of unpaid wages and liquidated damages."

SIGNED THIS the 19<sup>th</sup> day of July, 2016.

  
Philip J. Moss

SUBSCRIBED AND SWORN TO BEFORE ME on the 19 day of July, 2016,  
to certify which witness my hand and official seal.



  
Notary Public in and for the  
State of Texas

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF TEXAS  
3 SAN ANTONIO DIVISION  
4 DANA D. MOHAMMADI, )

5 Plaintiff, )

6 VS. ) CIVIL ACTION

7 ) NO.: SA-12-CV-0042-XR

8 AUGUSTINE NWABUISI, ET AL, )

9 Defendants. )

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12 TRANSCRIPTION OF THE VIDEOTAPED DEPOSITION OF  
13 ROSE NWABUISI  
14 ON  
15 SEPTEMBER 21, 2012  
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1 I-N-D-E-X

2 PAGE

3 Appearances..... 2

4 ROSE NWABUISI

5 Examination by Ms. Rodriguez..... 6

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1 A-P-P-E-A-R-A-N-C-E-S

2  
3 FOR THE PLAINTIFFS:

4 Mr. Glenn J. Deadman  
5 LAW OFFICES OF GLENN J. DEADMAN, P.C.  
6 509 South Main Avenue  
7 San Antonio, Texas 78204

8 FOR THE DEFENDANTS:

9 Ms. Claire Rodriguez  
10 Philip J. Moss  
11 EQUAL JUSTICE CENTER  
12 6609 Blanco Road  
13 Suite 260  
14 San Antonio, Texas 78216

15 ALSO PRESENT:

16 Augustine Nwabuisi;  
17 Rose Nwabuisi, The Witness;  
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1 MS. RODRIGUEZ: Okay. So we're recording  
2 now.

3 UNIDENTIFIED SPEAKER: Okay here. Okay.

4 Ready? All right. This is Friday --

5 MS. RODRIGUEZ: Uh-huh.

6 UNIDENTIFIED SPEAKER: -- September 21st --

7 MS. RODRIGUEZ: Uh-huh.

8 UNIDENTIFIED SPEAKER: -- of 2012. The  
9 time is 9:02 --

10 MS. RODRIGUEZ: Uh-huh.

11 UNIDENTIFIED SPEAKER: -- in the a.m. and I  
12 have before me Rose Nwabuisi. Rose, do you swear to  
13 tell the truth, the whole truth and nothing --

14 THE WITNESS: Yes.

15 UNIDENTIFIED SPEAKER: -- but the truth?

16 THE WITNESS: Yes, I do.

17 UNIDENTIFIED SPEAKER: I'm sorry?

18 THE WITNESS: Yes.

19 UNIDENTIFIED SPEAKER: Thank you.

20 MS. RODRIGUEZ: Uh-huh.

21 UNIDENTIFIED SPEAKER: That's it?

22 MR. DEADMAN: That's it. Yeah.

23 UNIDENTIFIED SPEAKER: Okay.

24 MS. RODRIGUEZ: Okay. And then  
25 need to say everybody who is present in the de

EXHIBIT

A-1

1 Nassouri who was employed by you?  
 2 A. Okay.  
 3 Q. Okay. So tell me a little bit about your  
 4 background in the home health care industry.  
 5 A. I am the administrator.  
 6 Q. Uh-huh. And what does that mean?  
 7 A. That means I basically oversee the functions of  
 8 the organization.  
 9 Q. Uh-huh. And what functions of the organization  
 10 do you oversee?  
 11 A. The clinic -- both clinical.  
 12 Q. The what?  
 13 A. The clinical function.  
 14 Q. The clinical functions. And what are the  
 15 clinical functions?  
 16 A. The nurses.  
 17 Q. The nurses, okay. And so who is included in  
 18 the -- in the nurses? Would Ms. Mohammadi be included  
 19 in the nurses?  
 20 A. Yes.  
 21 Q. Okay. And when you say that you oversee the  
 22 nurses, what does that mean exactly?  
 23 A. I oversee the -- what they do on a day to  
 24 day --  
 25 Q. Uh-huh.

1 A. -- maybe week to week, but there are other  
 2 supervisors under me too.  
 3 Q. Uh-huh. And so when you say you oversee, what  
 4 does oversee mean? Are you responsible for checking to  
 5 make sure that they're complying with proper nursing  
 6 procedures?  
 7 A. Yes.  
 8 Q. Okay. How do you do that? How do you check to  
 9 make sure that they're complying with proper nursing  
 10 procedures?  
 11 A. Periodically look at their notes --  
 12 Q. Uh-huh.  
 13 A. -- that they submitted.  
 14 Q. Uh-huh.  
 15 A. Periodically talk to them.  
 16 Q. Uh-huh.  
 17 A. Periodically (unintelligible) giving services.  
 18 Q. Uh-huh.  
 19 A. And that's what we do.  
 20 Q. Okay. And so how do you give them feedback  
 21 about the provision of services?  
 22 A. Occasionally when needed --  
 23 Q. Uh-huh.  
 24 A. -- there might be evaluations.  
 25 Q. Uh-huh. Do you all conduct evaluations on a

1 regular basis?  
 2 A. Depending on the situation.  
 3 Q. Okay. And did you ever conduct an evaluation  
 4 with Ms. Mohammadi?  
 5 A. Yes, we do.  
 6 Q. Okay. Okay. So tell me a little bit about  
 7 your company.  
 8 A. The company was initially licensed in 1995.  
 9 Q. Uh-huh.  
 10 A. December.  
 11 Q. Uh-huh.  
 12 A. We started operation in February '96.  
 13 Q. Uh-huh.  
 14 A. We incorporated the organization in I think, I  
 15 am not sure, May '99.  
 16 Q. Uh-huh.  
 17 A. And we've been in business for 17 years.  
 18 Q. That's a long time?  
 19 A. (Moving head up and down.)  
 20 Q. And so when you say, the business, do you mean  
 21 Resource Home Health Services?  
 22 A. Resource Home Health Services.  
 23 Q. Okay. Okay. And what kind of services do you  
 24 all provide?  
 25 A. We provide patient care to the elderly.

1 Q. Uh-huh.  
 2 A. Skilled nursing, physical therapy.  
 3 Q. Uh-huh.  
 4 A. Occupational therapy.  
 5 Q. Uh-huh.  
 6 A. Speech.  
 7 Q. Uh-huh.  
 8 A. And nurse's aide.  
 9 Q. Uh-huh.  
 10 A. Provider services, which is like homemaking.  
 11 Q. Uh-huh.  
 12 A. And we also have contract with DADS --  
 13 Q. Uh-huh.  
 14 A. -- on the mentally challenged children.  
 15 Q. Uh-huh. Okay. And so you said -- how long has  
 16 the business been around again?  
 17 A. This is the 17th year.  
 18 Q. Okay. Okay. And how big is your business?  
 19 A. I would say average.  
 20 Q. Average. So how many -- how many clients do  
 21 you have?  
 22 A. Plus or minus maybe -- I don't have that  
 23 number.  
 24 Q. You don't have that number?  
 25 A. Huh-uh.

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1 Q. (BY MS. RODRIGUEZ) Are there any questions or  
2 any additional information that you wanted to clarify  
3 before we wrap things up today?  
4 MR. DEADMAN: Objection. Form.  
5 Q. (BY MS. RODRIGUEZ) Okay. Is there any  
6 information that you remember that you want to provide  
7 us, anything that you want to clarify?  
8 MR. DEADMAN: Same objection.  
9 Q. (BY MS. RODRIGUEZ) Is there anything that you  
10 want to add so that we could better understand your  
11 viewpoint or your opinion in this case?  
12 MR. DEADMAN: Objection. Form.  
13 Q. (BY MS. RODRIGUEZ) Okay. So I think we're  
14 pretty much done for today. I would like to suspend  
15 the -- your deposition until a time identified in the  
16 future. If we need further information we will submit  
17 an additional notice of the deposition.  
18 MS. RODRIGUEZ: Before we wrap up though I  
19 just wanted to see, are we going to be able to get the  
20 nursing notes?  
21 MR. DEADMAN: Let me check with her  
22 afterward.  
23 MS. RODRIGUEZ: Okay.  
24 UNIDENTIFIED SPEAKER: Should we go off the  
25 record?

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1 MS. RODRIGUEZ: Let's just wait until we  
2 see about the nursing notes.  
3 MR. DEADMAN: Yeah. We can go off the  
4 record for a second. I'll check on the notes.  
5 MS. RODRIGUEZ: Okay.  
6 (Recording stops.)  
7 UNIDENTIFIED SPEAKER: On the record.  
8 MS. RODRIGUEZ: Okay. So I think we're  
9 adjourned until further notice. It sounds like we're  
10 going to be able to get the nursing notes later on this  
11 afternoon and the gross income information next week.  
12 MR. DEADMAN: Okay. And we will get those  
13 nursing notes over redacted to you.  
14 MS. RODRIGUEZ: Okay.  
15 MR. DEADMAN: We reserve our questions  
16 until time of trial.  
17 MS. RODRIGUEZ: Okay. Thank you so much  
18 for previously answering my questions today. We  
19 appreciate it.  
20 THE WITNESS: Thank you.  
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2 WESTERN DISTRICT OF TEXAS  
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4 DANA D. MOHAMMADI, )  
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1 WITNESS MY HAND, this the 11th day of  
2 November, A.D. 2012.  
3  
4

5 Deborah A.G. Davidson, Texas CSR 1857  
6 Expiration Date: 12/31/13  
7 Firm Registration No. 253  
8 Davidson Reporting, Inc.  
9 926 Chulie Drive  
10 San Antonio, Texas 78216  
11 Phone: (210) 340-3656  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS

DANA D. MOHAMMADI,

Plaintiff,

vs.

No. SA:12-CV-00042

AUGUSTINE NWABUISI, ROSE NWABUISI,  
RESOURCE HEALTH SERVICES, INC., and  
RESOURCE CARE CORPORATION,

Defendants.

TRANSCRIPT OF BENCH TRIAL PROCEEDINGS

VOLUME II

before

HONORABLE DAVID A. EZRA

on

the 25th of September, 2013

APPEARANCES

APPEARING FOR THE PLAINTIFF:

Ms. Claire Rodriguez &  
Mr. Philip J. Moss  
Equal Justice Center  
6609 Blanco Road, Suite 260  
San Antonio, Texas 78216  
210-308-6222  
claire@equaljusticecenter.org

APPEARING FOR THE DEFENDANTS:

Mr. Glenn J. Deadman  
Law Offices of Glenn J. Deadman, P.C.  
509 S. Main Avenue  
San Antonio, Texas 78204  
210-472-3900  
gjdeadman@aol.com



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1 THE COURT: All right. Good morning. The Court  
2 would note the continuation of the proceedings and the presence  
3 of counsel as well as the plaintiff and the defendants.

4 All right. So we were about to have cross-examination,  
5 and I would remind you, ma'am, that you remain under oath.

6 MR. DEADMAN: May I proceed, Your Honor?

7 THE COURT: You may.

8 MR. DEADMAN: Thank you.

9 SARA CONNELL,  
10 having been previously duly sworn, testified under oath as  
11 follows:

12 CROSS-EXAMINATION

13 BY MR. DEADMAN:

14 Q. Ms. Connell, you're Ms. Mohammadi's sister?

15 A. Yes.

16 Q. How much time did you spend with her preparing for testimony  
17 in trial of this case?

18 A. Just whenever I talked with the lawyers Sunday.

19 Q. And how long did you spend with the lawyers on Sunday  
20 preparing for your testimony?

21 A. Under an hour.

22 Q. What did you talk about in that under an hour?

23 A. Just to tell the truth.

24 Q. Anything in particular?

25 A. No.

1 A. Uh-hum.

2 Q. And that you were under oath when you took that deposition?

3 A. Sure. What page?

4 Q. Page 50. Start at Line 16. You testified: I went together  
5 to each lunch with my employees and meet some of my  
6 contractors.

7 So your testimony is that this means you only did that one  
8 time?

9 A. I went to lunch with my employees many times to eat with my  
10 contractors --

11 Q. Uh-hum.

12 A. -- but on one occasion Dana join.

13 Q. She only came on one single occasion?

14 A. One or two occasion. But, yes, I went frequently with my  
15 employees --

16 Q. But --

17 A. -- from Houston.

18 Q. -- Ms. Mohammadi was there, but she did not accompany you?

19 A. No, she was at the office. This is my employees from  
20 Houston office. Whenever we visit San Antonio office, I call  
21 up some of my contractors at, maybe, Superior, Molina, and  
22 Amerigroup, and we went out after hours to eat before we leave  
23 with my employees, yes.

24 Q. So your testimony is that you went out to eat with your  
25 contractors with your -- only with your employees from Houston?

## C E R T I F I C A T E

I, Kristin M. Anderson, a Registered Professional Reporter, and Official Court Reporter for the U.S. District Court, Western District of Texas do hereby certify:

That the foregoing is a true and correct transcript of the proceedings transcribed from my stenographic notes in the above-entitled matter;

That I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or financially interested in the action.

WITNESS my hand on this 14th of October, 2013.

/s/ Kristin M. Anderson  
Kristin M. Anderson, RPR  
United States Court Reporter  
655 E. Cesar E. Chavez, Blvd.  
San Antonio, TX 78206